

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
ELLA LICHTENBERG**

	*	
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	*	
	*	Board of Appeals No. S-2862
Petitioner	*	(OZAH No. 13-11)
Ella Lichtenberg	*	
For the Petition	*	
* * * * *		
Robert Goff	*	
Department of Housing and	*	
Community Affairs	*	
* * * * *		

Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION
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I. STATEMENT OF THE CASE

In Petition No. S-2862, Petitioner, Ella Lichtenberg, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 9237 East Parkhill Drive, Bethesda, Maryland, in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 22, Block G, in the Parkview Subdivision. The tax account number is 00628157.

On November 9, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for February 28, 2013. Exhibit 12(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated February 4, 2013, recommended approval of the special exception, with three (3) conditions. Exhibit 14.¹

A Housing Code Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on January 28, 2013. Housing Code Inspector Robert Goff (Mr. Goff) reported his findings in a memorandum dated February 13, 2013. Exhibit 15. The accessory apartment is 451.9 square feet in size with 403 square feet of habitable space. Mr. Goff determined that based on the habitable space, occupancy of the unit is limited to no more than two unrelated persons or a family of three.

DHCA submitted a memorandum dated, February 5, 2013, from Ada DeJesus, Licensing and Registration Unit, reporting there were no accessory apartments or registered living units (RLU's) in the direct vicinity of Petitioner's property. Exhibit 15(a). However, Technical Staff reported that there are two approved special exceptions for accessory apartments (S-1915,

¹ The Technical Staff report is frequently quoted and paraphrased herein.

approved February 17, 1992, and S-2846, approved December 20, 2012) located within the staff-defined neighborhood. Exhibit 14, pp. 3-4.²

The hearing went forward as scheduled on February 28, 2013, and Petitioner appeared *pro se*. Petitioner submitted a copy of her deed to the property with her application (Exhibit 10). Petitioner testified in support of the petition and adopted the findings in the Technical Staff Report (Exhibit 14) as her own evidence and agreed to meet all the conditions set forth in the report. Petitioner also agreed to comply with all the conditions set forth in the Housing Code Inspector's Report (Exhibit 15). Tr. 15-17. Petitioner identified several photographs (front, rear, side and street views) of her property (Exhibits 9 and 13 (a)-(c)). Petitioner modified the Site Plan (Exhibit 4), Landscape and Lighting Plan (Exhibit 6), and Floor Plan (Exhibit 5). Mr. Goff also testified.

Prior to the hearing, Andres Buonanno and Maria Morasso, Petitioner's neighbors on the adjacent lot on the south side of her property, submitted three photographs of the front, side and street views of Petitioner's property, a copy of the Landscape and Lighting Plan (Exhibit 6), and a letter expressing concerns regarding the on-street parking and location of the walkway to the accessory apartment entrance. Exhibit 13 (a)-(e).³ These concerns are addressed in Section II.G (Community Response) of this report. Mr. Buonanno and Ms. Morasso were not present at the hearing. No opposition appeared at the hearing.

At the time of the hearing, a notary was not available to notarize Petitioner's Affidavit of Posting. The record was held open until March 8, 2013, to give Petitioner time to file a notarized

² According to Mr. Goff, Ms. DeJesus' report is based on accessory apartments that have been issued a license. He noted that even after being granted a special exception, some owners do not apply for or withdraw a license application because they cannot complete the required improvements or repairs. Tr. 83-84.

³ The letter, survey and photographs were sent via e-mail on February 6, 2013, and marked as Exhibits 13 (a)-(e). With the exception of one photograph (Exhibit 13(b)), hard copies of these documents were resubmitted via mail, received on February 13, 2013, and marked as Exhibits 16 (a)-(d).

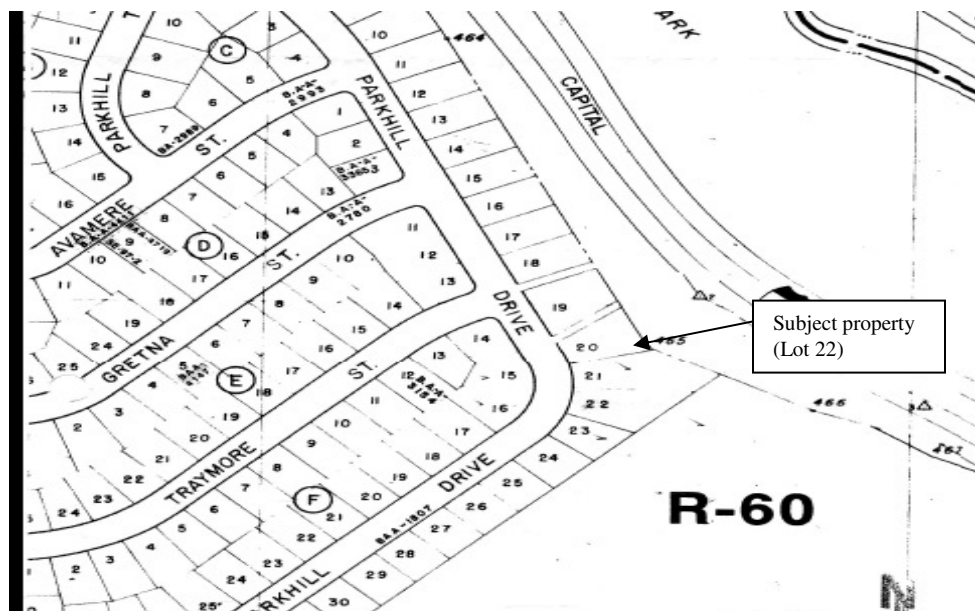
Affidavit of Posting and for the Court Reporter to complete the hearing transcript. The Affidavit of Posting, Exhibit 19, was received on March 11, 2013, three days after the record closed. Since the Affidavit of Posting was received after the record closed as scheduled, the Hearing Examiner hereby reopens and closes the record effective March 11, 2013, in order to receive Petitioner's notarized Affidavit of Posting into the record.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 9237 East Parkhill Drive, Bethesda, Maryland, in the Parkview Subdivision. The property is an 11,724 square-foot interior lot located on the east side of East Parkhill Drive just south of Traymore Street as shown below on the Zoning Map of the area (Exhibit 11):

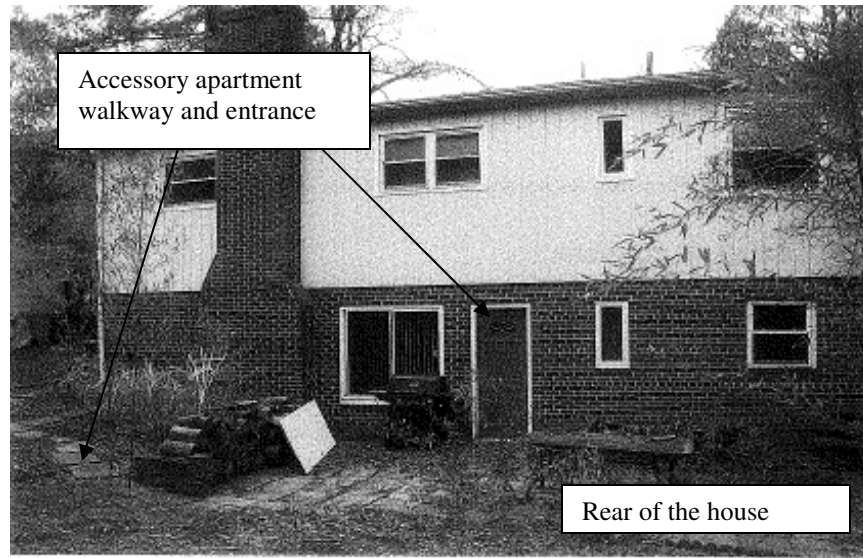


site.” Exhibit 14, p. 1. There is a second entrance into the kitchen of the main dwelling on the north side of the property. Access to the side entrance is via a slate walkway from the rear yard to a wood deck with steps. Petitioner testified that there is no access to the side entrance from the front yard because of mature trees and bushes on the northwest corner of the dwelling to the side property line. Tr. 31-32.

There is a large pine tree to the right of the carport and driveway. It is clear of the existing slate walkway to the rear yard located on the south side of the property. The driveway can accommodate at least two cars parked end to end with adequate space for pedestrian access to the main dwelling entrance, carport and walkway to the accessory apartment entrance. The carport can accommodate one vehicle and there is sufficient on-street parking along both sides of East Parkhill Drive.

Photographs of the front and rear of the property, taken from the Technical Staff report (Exhibit 14, pp. 3 and 5), are shown below and on the next page.





B. The Surrounding Neighborhood

Technical Staff reported that the general neighborhood, which consists of approximately 167 one-family detached homes in the R-60 Zone, “is generally bound by Cedar Lane to the north, Capital Beltway (I-495) to the east, federal land owned by the United States Department of the Navy and developed as part of the Bethesda Naval Medical Center to the south and one-family residential uses along the west side of Chaunte Drive.” Exhibit 14, p. 3. Having no evidence to the contrary, the Hearing Examiner accepts Staff’s definition of the general neighborhood.

The neighborhood boundary, which is depicted with a solid line on the location map (Exhibit 14, p. 4), shown on the next page of this report, has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic.

Based on a combined reading of the Technical Staff report (Exhibit 14) and the memorandum from DHCA (Exhibit 15(a)), there are two approved accessory apartments (S-1915 and S-2846) and no RLU’s within the staff-defined neighborhood. Both are located on Cedar Lane and are noted on the neighborhood boundary map.



The Hearing Examiner concurs with Technical Staff's conclusion that the addition of an accessory apartment to the neighborhood will not result in an excessive concentration of similar uses or adversely affect the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the geographic area covered by the *Bethesda Chevy Chase Master Plan*, approved and adopted in April 1990. Technical Staff advises that there are no Master Plan recommendations relevant to this site. However, Technical Staff noted that a stated goal of the Master Plan is to “[p]rovide for a balanced housing supply so that persons of varying income levels, age, backgrounds, and household characteristics may find suitable housing appropriate to their needs.” Exhibit 14, p. 6. Technical Staff found that the proposed

special exception request is “compatible with the existing neighborhood and meets the requirements of the special exception standards [for an accessory apartment use].” *Id.* Thus, Technical Staff found the proposed accessory apartment is consistent with the *Bethesda Chevy Chase Master Plan*.

The Hearing Examiner agrees with Technical Staff because the Master Plan supports the R-60 zoning in which accessory apartments are a special exception use. Further, the Master Plan specifically “endorses expanding choices of housing types by provision of accessory apartments.” Exhibit 8, p. 33. The proposed accessory apartment is not visible from the street and therefore does not change the existing structure’s appearance as a single-family dwelling consistent with the surrounding neighborhood. There is sufficient off-street and available on-street parking on both sides of East Parkhill Drive to accommodate the proposed use and main dwelling. Since the exterior of Petitioner’s home will not be changed, it will retain the residential appearance and compatibility sought by the Master Plan. Accordingly, the Hearing Examiner concurs with Technical Staff and finds that the proposed use is consistent with the *Bethesda Chevy Chase Master Plan*.

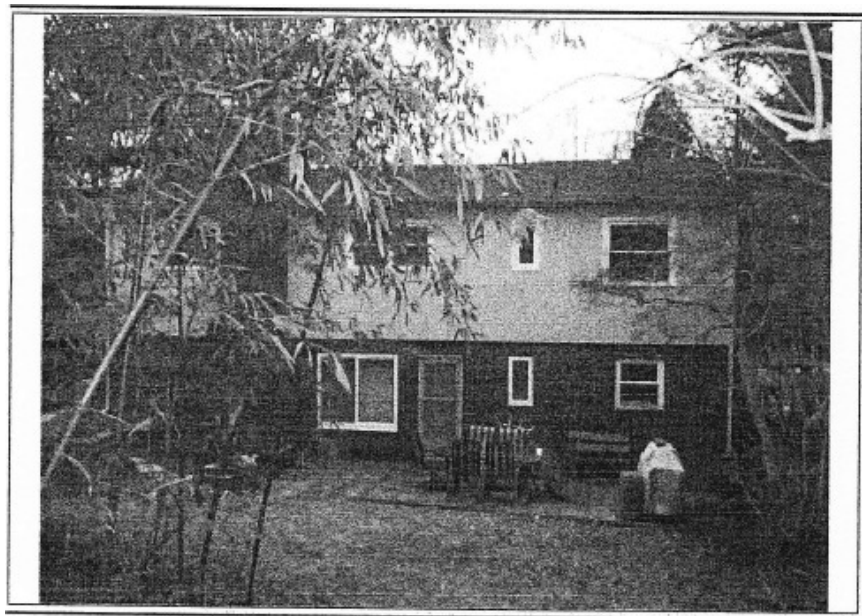
D. The Proposed Use

The Petitioner is seeking a special exception to allow a 451.9 square-foot accessory apartment in the basement of her split-level home.⁴ Petitioner referred to the basement as the “first level” of her split-level home which is below ground in the front of the house and above ground in the rear. The main dwelling includes a kitchen and living room on the second level and bedrooms on the third level. Tr. 85-88. Technical Staff advises that based on the Maryland Department of Taxation and Assessments records (SDAT) (Exhibit 17), the total enclosed area

⁴ In her written statement, Petitioner estimated that the size of the accessory apartment was 704 square feet. Exhibit 3. Mr. Goff determined that the unit was in fact 451.9 square feet in size when he measured the unit as part of the preliminary inspection. Exhibit 15.

for the main dwelling is 1,483 square feet. Based on this information, the Hearing Examiner concurs with Technical Staff's finding that the accessory apartment is subordinate to the main dwelling. Exhibit 14, p. 16.

The proposed accessory apartment will be a separate living unit with its own exterior entrance located in the rear of the dwelling as shown below in a photograph provided by the Petitioner (Exhibit 9):

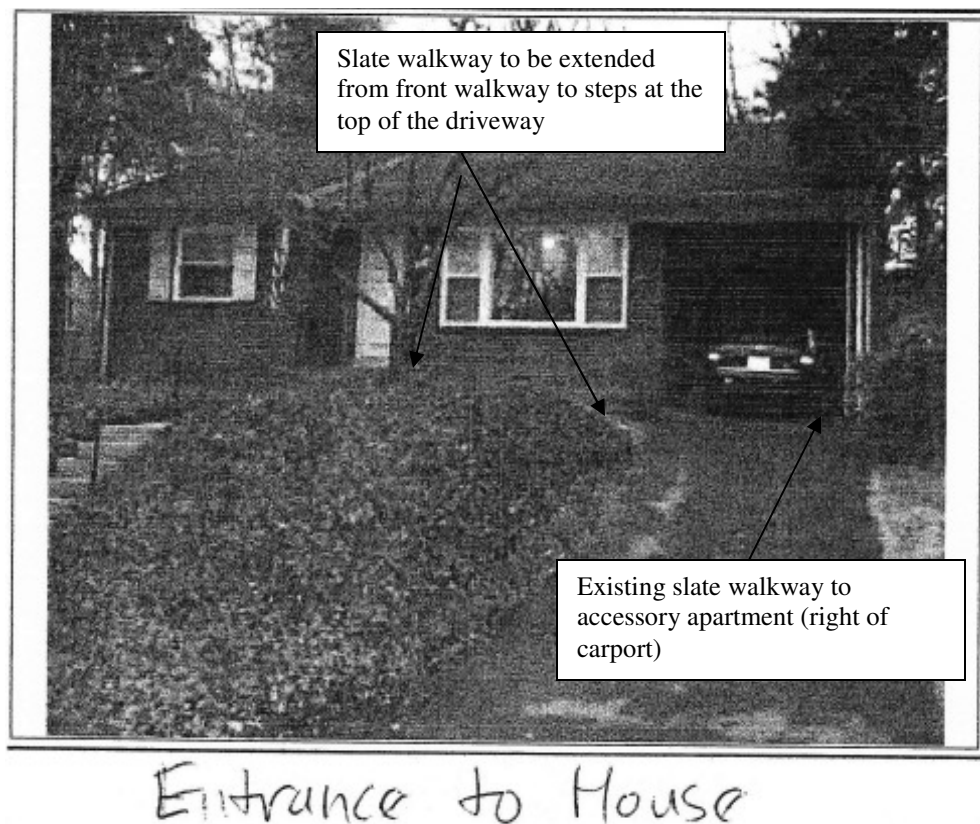


Entrance to Accessory Apartment

Technical Staff advises that the entrance is typical of a rear-entry into a single-family dwelling and is separate and distinct from the main dwelling entrance. Thus, Technical Staff found that the accessory apartment entrance preserves the appearance of a single-family dwelling and will not detract from the appearance of the residential neighborhood. Exhibit 14, pp. 5 and 16.

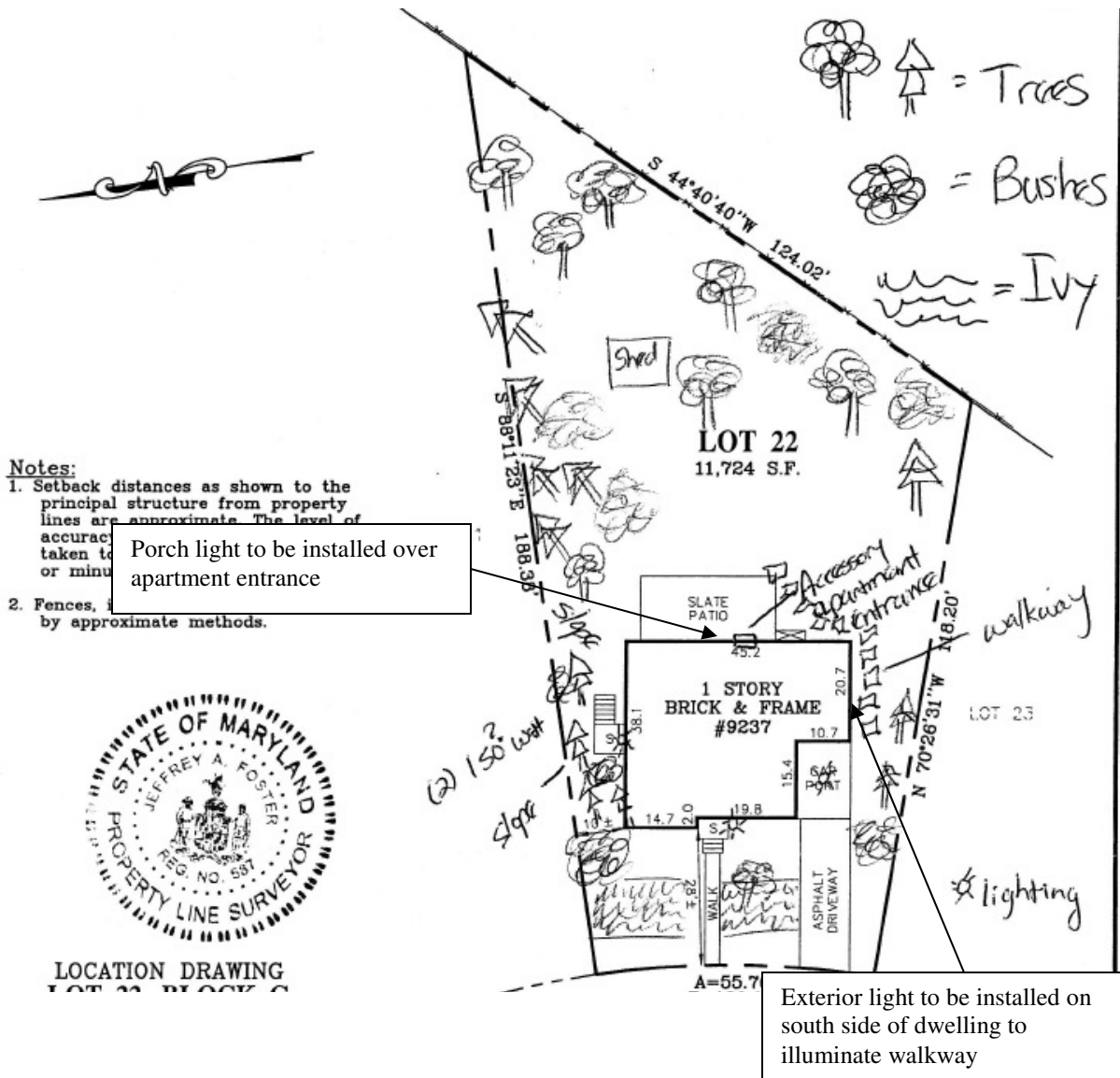
Access to the accessory apartment is via an existing slate walkway located to the right of the carport which extends along the south side of the dwelling to the rear yard. The walkway

connects to a stone patio leading to the accessory apartment entrance.⁵ Petitioner will extend the walkway along the front of the house from the front walkway (to the main dwelling entrance) to two steps at the top of the driveway. Petitioner agreed to provide sufficient space at the top of the driveway to allow unimpeded pedestrian access across the driveway. This will provide the accessory apartment tenant with the option of using the front walkway or the driveway to access the walkway to the rear accessory apartment entrance. Petitioner provided the following photograph of the driveway, carport and entrance to the main dwelling (Exhibit 9):



⁵ Petitioner testified that she will improve the existing walkway by turning the existing stones (1' x 2') so the walkway will be 2 feet wide. The stones will be aligned end to end to provide a continuous walkway from the front concrete walkway to the rear patio and accessory apartment entrance. Tr. 78-79.

The Landscape and Lighting Plan (Exhibit 6), shown below, reflects the location of the existing landscaping and exterior lighting for the property. Petitioner modified the plan to show the location of the downward slope on the north side of the property, the accessory apartment entrance in the rear and the existing walkway along the south side of the property.⁶



⁶ Petitioner modified the Site Plan (Exhibit 4), previously shown on page 5 of this report, to show the proposed extension of the slate walkway from the top of the driveway to the front walkway.

Technical Staff reported that the “front yard contains extensive ground cover that is healthy [and] [t]he rear yard contains several large trees and other vegetation that screen the property from the abutting I-495 right-of-way.” Exhibit 14, p. 8. The existing lighting includes two porch lights at the main dwelling entrance and a ceiling light in the center of the carport. The north side entrance into the main dwelling and wood deck are illuminated with a flood light (not motion sensor).⁷

As a condition of approval, Petitioner will install standard residential exterior lights over the accessory apartment entrance and on the south side of the property to illuminate the walkway to the accessory apartment entrance. Exhibit 15. Mr. Goff advised Petitioner that she can install low-voltage garden lights along the walkway as an alternate to installing a residential (100 watts or less) motion sensor light fixture to the right side of the house. Tr. 40-43.

The Hearing Examiner finds that the existing and proposed exterior lighting will provide sufficient illumination for safe access to the accessory apartment walkway and entrance provided Petitioner complies with the recommended conditions of approval as stated in Part V of the Report.

DHCA inspected the property on January 28, 2013, and Housing Code Inspector Robert Goof reported his findings in a memorandum dated February 13, 2013 (Exhibit 14).⁸ The substance of his report is set forth below:

The preliminary inspection was conducted on 1-28-2013. The Accessory Apartment is located in the cellar of the house. The issues regarding the Accessory Apartment standards are as follows:

1. Install egress window in bedroom. Window must be not more than

⁷ Petitioner believes she uses 150 watt bulbs for the flood lights. However, she agreed to replace the current lights with bulbs that are 100 watts or less to be consistent with residential standards. Tr. 38-39.

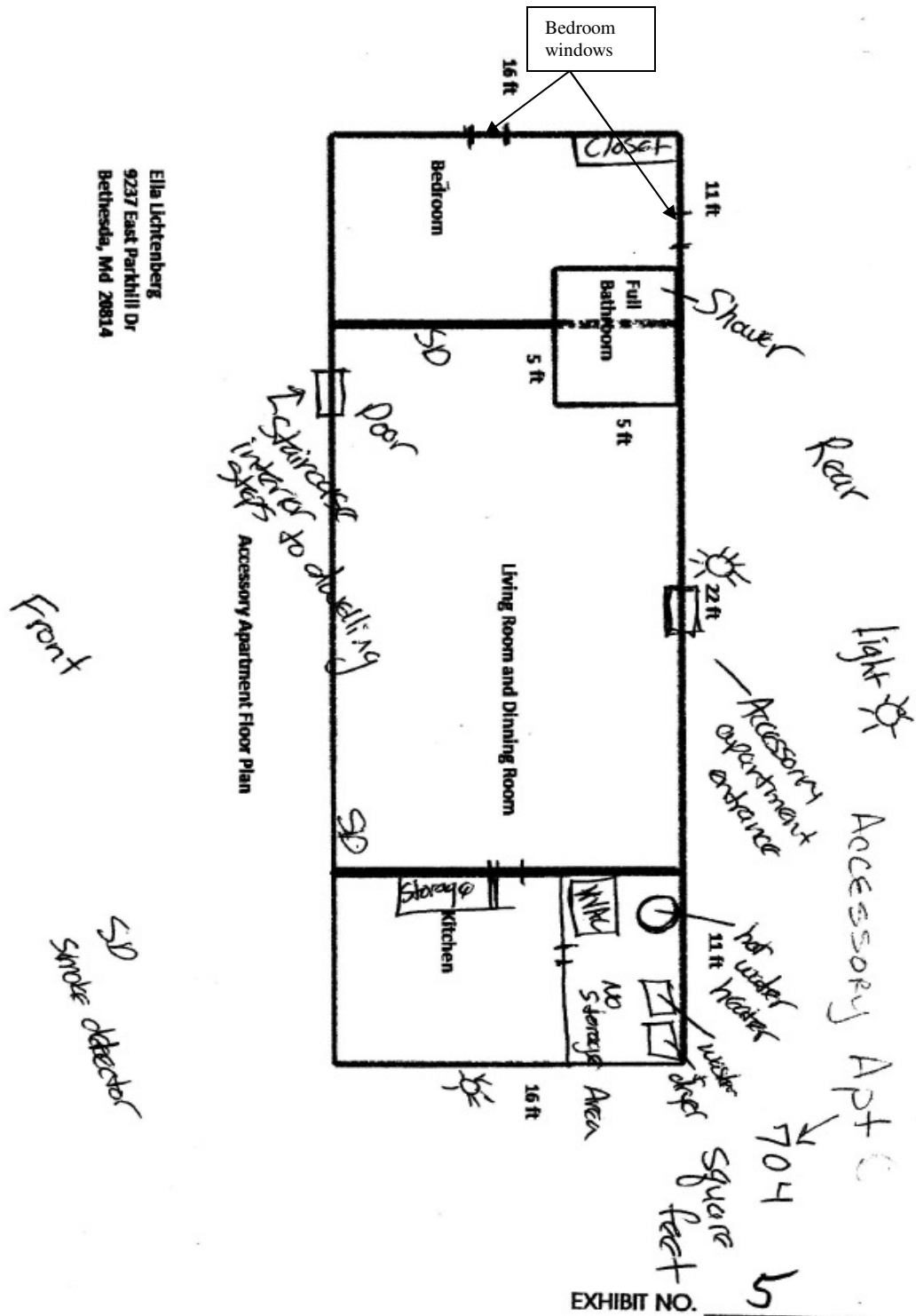
⁸ Mr. Goff identified the lower level of Petitioner’s home as the “cellar of the house” in his written report and as the “basement” during the hearing. Tr. 80.

- 44" from the floor to window opening. Window must be at least 5 sq. feet opening.
2. Install bathtub/shower to make a full bath.
 3. Install full kitchen, stove, sink, cabinets and countertops.
 4. Install wall to block off HVAC room from kitchen.
 5. Install door at bottom of steps to block off the Accessory Apartment from the main house.
 6. Install lights on right side of house to the Accessory Apartment.
 7. Install light over door to the Accessory Apartment [entrance].
 8. Install smoke detector outside of bedroom.
 9. The total square feet of the Accessory Apartment is 451.9. The habitable space of the Accessory Apartment is 403 square feet. Two (2) unrelated persons or no more than a family of three (3) can occupy the Accessory Apartment.
 10. Owner must obtain all permits and must have final approval before [the] Accessory Apartment can be occupied.
 11. The driveway will accommodate 2 cars. There is off-street parking (No permits needed).

Mr. Goff amended his report to add a "refrigerator" to the list of improvements and appliances necessary to install a "full kitchen" as noted in item no. 3. Tr. 51.

Based on Petitioner's questions, Mr. Goff clarified that Petitioner only has to install one egress window in the bedroom (item no. 1). Improvements to the bathroom require the installation of either a shower or bathtub (item no. 2). He noted that the HVAC room can be used as a laundry room but it cannot be used for storage because of the gas appliances (item no. 4). The interior door at the bottom of the steps to the main dwelling can be metal or wood but must be fire rated for a minimum of 1 hour and 15 minutes (item no. 5). Further, the interior door must be equipped with a lock to secure access between the unit and main dwelling.

The overall net floor area of the accessory apartment is approximately 451.9 square feet, 403 square feet of which is habitable space. The accessory apartment will include one bedroom, a full bath, living/dining room area, a full kitchen, and laundry room facilities. The Floor Plan (Exhibit 5) modified to correspond to the issues and repairs identified in Mr. Goff's preliminary inspection report (Exhibit 15), is shown on the next page.



Elia Lichtenberg
9237 East Parkhill Dr
Bethesda, Md 20814

The Hearing Examiner concurs with Technical Staff's finding that the proposed accessory apartment "will provide space and facilities necessary for an apartment use." Exhibit 14, p. 10.

Technical Staff reports (Exhibit 14, p. 7):

The property is located on East Parkhill Drive, a 26-foot wide secondary residential street with a posted speed limit of 25 mph. This roadway serves the surrounding Parkview subdivision neighborhood. There are no sidewalks along East Parkhill Drive; however, the proposed special exception use will not have an adverse effect on pedestrian access or safety in the area. The existing on site driveway can accommodate two parked vehicles. With the supply of on street parking as well as parking permitted along both sides of East Parkhill Drive, the proposed special exception use will not have an adverse effect on parking in the area.

Mr. Goff agreed with Technical Staff's finding of adequate on-street parking and further noted that the carport can accommodate an additional vehicle. Tr. 71. Thus, there is adequate off-street parking to accommodate three vehicles.

Petitioner identified and confirmed that the photograph submitted by Mr. Buonanno and Ms. Morasso (Exhibit 13 (b)), shown below, accurately depicts the available on-street parking in front of her house and on both sides of East Parkhill Drive. Tr. 47.



Petitioner testified that she parks her car in the carport and rarely parks in front of her house. Petitioner's daughter parks her vehicle on the lower part of the driveway or on the west side of the street. Petitioner explained that there is an informal "common practices" agreement among the neighbors for the residents to park, space permitting, on the west side of the street where the road curves during inclement weather (e.g., snow and ice), on holidays or during large gatherings when there are more vehicles parked on the street. This also provides residents with an area to walk their pets since there are no sidewalks in the neighborhood. Tr. 71-73.

Petitioner noted that the photograph submitted by her neighbors (Exhibit 13(b)), shown on the previous page, reflects that there is sufficient available on-street parking on both sides of the street. Thus, Petitioner agreed with Technical Staff that there is adequate on-street parking to accommodate the accessory apartment use. However, Petitioner agreed to provide the accessory apartment tenant with space on her driveway "during those special circumstances when there are a lot of vehicles in our neighborhood." Tr. 77.

The Hearing Examiner finds, as did Technical Staff and the Housing Code Inspector, that there is adequate off-street parking for at least three vehicles (one in the carport and two on the driveway) and sufficient on-street parking along both sides of the street to accommodate the accessory apartment and main dwelling.

E. Traffic Impacts

Technical Staff advises that the proposed special exception petition "meets the requirements of the [Adequate Public Facilities] APF test." Exhibit 14, p.8. Transportation Staff reported (Exhibit 14, Attachment 2):

Local Area Transportation Review

Using trip generation rates included in the *Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines*, the single-family

dwelling on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using the same rates, the accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods.

Since the existing house and the accessory apartment together will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the subject petition satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

As noted above, the single-family dwelling and the accessory apartment on the property together will generate less than four peak-hour trips during the weekday morning and evening peak periods. The subject petition is therefore not subject to the PAMR requirements of the APF test.

Due to the small scale of the proposed use, the Hearing Examiner agrees with Technical Staff that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. Exhibit 14, p. 7 and Attachment 2.

F. Environmental Impacts

Petitioner does not propose any external changes to the dwelling with the exception of the enlargement of one of the bedroom windows as required by DHCA for adequate fire escape. Petitioner is not proposing to remove any trees or add any new plantings. Exhibit 14, Attachment 3. Technical Staff advises that the property is exempt from the Forest Conservation Law and “[t]here are no landscaping or environmental issues associated with this application.” Exhibit 14, p. 8. Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

Petitioner’s neighbors on the adjacent lot on the south side, Andres Buonanno and Maria

Morasso of 9235 East Parkhill Drive, submitted a letter in response to the information contained in Petitioner's application. They also included several photographs of Petitioner's property and a copy of Petitioner's Landscape and Lighting Plan (Exhibit 13(a)-(e)).

Mr. Buonanno and Ms. Morasso did not specifically state that they opposed Petitioner's application. Instead they expressed their concern that the additional vehicle from the accessory apartment will add to the already "difficult" on-street parking on East Parkhill Drive, especially in front of Petitioner's house which is on the curve. They clarified that the on-street parking situation is difficult "because the neighbors do not have sufficient garages or carport space." Thus, in their opinion, they believe Petitioner's assertion that there is adequate on-street parking for at least six vehicles is "vastly exaggerated." They included a photograph of the on-street parking along both sides of East Parkhill Drive (Exhibit 13 (b)). With this clarification, they suggested limiting the number of occupants of the accessory apartment so "as not to increase the burden of parking for all immediate neighbors." Exhibit 13 (d).

Technical Staff conducted an on-site visit and determined that there was adequate on-street parking to accommodate the accessory apartment use and main dwelling. The Housing Code Inspector agreed with staff. Mr. Buonanno and Ms. Morasso submitted a photograph (Exhibit 13(b)) of East Parkhill Drive which reflects that there is adequate on-street parking along both sides of the street, including in front of Petitioner's house.

As a condition of approval, occupancy of the one-bedroom accessory apartment will be limited to no more than two (2) unrelated persons or a family of three (3) as determined by the Housing Code Inspector. Exhibit 15. Thus, there is the possibility that accessory apartment occupant(s) will add one or two vehicles to the neighborhood. Given the availability of on-street parking along both sides of East Parkhill Drive, the Hearing Examiner agrees with Technical Staff

and finds that “the proposed special exception use will not have an adverse effect on parking in the area.” Exhibit 14, p. 7.

Mr. Buonanno and Ms. Morasso also expressed concern regarding the location and expansion of the existing walkway to the accessory apartment. They suggested that the walkway be located on the north side of the property where they believe there is more space to accommodate the walkway than on the south side of the property. They are concerned that the location and expansion of the walkway on the south side of the property will further disrupt their privacy and require the removal of a large pine tree between the two properties.

Based on the evidence presented, the only changes proposed to the existing slate walkway is to reposition the stones (1'x 2') in place so the path will be 2 feet wide. The stones will be aligned end to end to provide a continuous walkway for greater safety. There is nothing in the record to suggest that these minor changes will require the removal of the large pine tree between the properties or any other existing landscaping. Mr. Buonanno and Ms. Morasso provided the following photograph of the existing pine tree between their properties (Exhibit 13 (c)):



The same cannot be said if the walkway were to be relocated to the north side of the property which is landscaped with large trees and bushes as shown on the Landscape and Lighting Plan (Exhibit 6) and in the photograph of this area (Exhibit 13 (a)), shown below:



Given the change in topography (downward slope), existing landscaping, and the wood deck on the north side of the property, the Hearing Examiner is not persuaded that there is more space on the north side to warrant relocating the walkway to this side of the property. Similarly, the Hearing Examiner is not persuaded that the location of the walkway would determine where the tenants are likely to park on the street. Pedestrian access to either walkway would be from the front walkway or paved driveway. There is sufficient on-street parking along both sides of the street and directly in front of Petitioner's house. Thus, the Hearing Examiner finds that the existing walkway is appropriately located on the south side of the property.

III. SUMMARY OF THE HEARING

Petitioner Ella Lichtenberg testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Robert Goff, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioner's CasePetitioner Ella Lichtenberg:

Petitioner agreed to submit a notarized Affidavit of Posting after the hearing because a notary was not available on the day of the hearing. Tr. 8-9. Petitioner adopted the findings and conclusions in the Technical Staff report (Exhibit 14) as her own evidence and agreed to comply with all the conditions set forth in the report. Petitioner testified that she will occupy the main dwelling and will not receive compensation for more than one dwelling unit. Petitioner was present during the January 28, 2013, preliminary inspection of the unit by Mr. Goff. She agreed with the issues noted in his February 13, 2013 (Exhibit 15) report and to make the necessary repairs and improvements identified in the report as a condition of approval. Petitioner accepted Mr. Goff's finding that the accessory apartment is 451.9 square feet in size, 403 square feet of which is habitable space. Petitioner testified she understood and agreed that occupancy for the accessory apartment is limited to no more than a family of three (3) or two (2) unrelated persons (DHCA item No. 9). Tr. 13-17.⁹

Petitioner testified that she is seeking this special exception use because she is retiring in October from her job as a budget analyst. Petitioner identified the Site Plan (Exhibit 4), Landscape and Lighting Plan (Exhibit 6), Floor Plan (Exhibit 5), and photographs of the property (Exhibit 9), including photographs of her property submitted by her neighbors, Mr. Buonanno and Ms. Morasso (Exhibit 13 (a)-(c)). Tr. 20-22.

Using a red pen, Petitioner modified the Site Plan (Exhibit 4) to show the location of the existing slate walkway to the accessory apartment in the rear of the dwelling. The walkway is located to the right of the carport on the south side of the dwelling. The slate stones are

⁹ In the hearing transcript, page 13, line 20, to page 15, line 8, Petitioner is incorrectly identified as "Ms. CitaraManis" and the Hearing Examiner is incorrectly identified as "Ms. Lichtenberg."

approximately 1' x 2' in size and aligned with a 4" separation between each stone. Petitioner will improve the walkway by turning the existing stones so the walkway is 2' wide. The stones will be aligned end to end to provide a continuous walkway to the rear stone patio. Petitioner believes this arrangement will provide safer access to the accessory apartment entrance. Petitioner agreed to extend the walkway from the front concrete walkway to the two steps leading down to the top of the driveway which connects with the carport. Petitioner will provide sufficient space at the top of the driveway to allow unimpeded pedestrian access across the driveway. Tr. 23-31 and 78-79.

Petitioner identified a slate walkway from the rear yard to the stairs and wood deck located on the north side of the property. The small wood deck provides access to a side entrance into the kitchen for the main dwelling. Petitioner clarified that there is no pedestrian access or path to the north side entrance or deck from the front yard because of the change in topography (downward slope) and existing mature trees and bushes on the front northwest corner of the dwelling. Petitioner testified that the photographs submitted by Mr. Buonanno and Ms. Morasso (Exhibits 13(a)-(c)) accurately depict the existing landscaping and condition of her property (front and side views) and the existing on-street parking on both sides of East Parkhill Drive in front of her house. Tr. 31-32.

Petitioner modified the Landscape and Lighting Plan (Exhibit 6) to show the existing walkway and accessory apartment entrance consistent with the modifications noted on the Site Plan (Exhibit 4). The existing landscaping includes trees, bushes and ivy on the front yard which slopes down to the street. There is a wooded area in the rear yard. The existing lighting includes two standard porch lights on both sides of the front door, a ceiling light in the middle of the carport and a 150 watt flood light (not motion sensor) over the north side entrance into the main dwelling. Petitioner agreed to use standard residential exterior lighting with bulbs that are 100

watts or less. Petitioner agreed to reduce the wattage of the flood lights on the north side. Petitioner agreed to install a standard residential porch light over the accessory apartment entrance (DHCA item No. 7). Petitioner agreed to install residential lighting on the south side of the dwelling (motion sensor) to illuminate the walkway to the accessory apartment entrance (DHCA item No. 6). Mr. Goff informed Petitioner that low voltage garden lights along the walkway would be an acceptable alternative to satisfy this requirement. Tr. 34-41. Petitioner also noted the downward slope and existing landscaping on the north side of the property on the plan. Tr. 42-43.

Petitioner identified photographs of the front and rear views of her home shown in Exhibit 9. She also identified similar photographs of her property which are in the Technical Staff report (Exhibit 14) and three photographs submitted by her neighbors (Exhibits 13 (a)-(c)). She confirmed that these photographs accurately depict the existing conditions of her property and parking along both sides of the street. Tr. 45-48.

Petitioner modified the Floor Plan (Exhibit 5) for the accessory apartment to correspond with the issues and required improvements identified in Mr. Goff's preliminary inspection report (Exhibit 15). Petitioner understands that she must install a full kitchen (DHCA item No. 3). Mr. Goff clarified that the stove can include an oven and Petitioner can install a microwave if she wants. He also clarified for the record that Petitioner must install a refrigerator and noted that she can create a storage area in the kitchen. Petitioner will install a wall to block off the HVAC room from the kitchen and understands that she cannot use the HVAC area for storage because of the gas kitchen appliances. Tr. 50-55.

The existing half bath will be improved with a shower or bathtub (DHCA item No. 2). Mr. Goff clarified that she is not required to install both a shower and bath because installation of a

shower or bath is sufficient to qualify as a full bath. Tr. 56. Petitioner identified the approximate location of the two windows in the bedroom and the closet. Petitioner understands she must enlarge at least one of the bedroom windows to install an egress window (DHCA item No. 1) that is “no more than 44" from the floor to window opening [and] [w]indow must be at least 5 sq. feet opening.” Petitioner could not identify which window she will enlarge until her contractor determines whether the bathroom wall has to be moved to accommodate the shower or bath. Tr. 57-63.

Petitioner noted the location of the interior steps from the accessory apartment to the main dwelling and asked for clarification on the type of door she is required to install (DHCA item No. 5). Mr. Goff clarified that the interior door can be metal or wood that is fire rated for a minimum of 1 hour 15 minutes. The door must be secure and the type of lock is her choice. Tr. 64-65. Petitioner indicated the location of the smoke detector outside the bedroom (DHCA item No. 8). Although not required, Petitioner stated she wanted to install another smoke detector in either the kitchen or living room as noted on the plan. Tr. 66-67.

Petitioner will obtain all the necessary permits to complete the repairs and proposed modifications to the unit and understands she must “have final approval before the Accessory Apartment can be occupied [DHCA item No. 10].” Petitioner was advised to wait for the Board of Appeals final decision before starting any construction to the unit. Tr. 68-69.

Petitioner testified that there is sufficient parking on the carport and driveway to accommodate three (3) cars parked end to end. She parks her one car in the carport. Petitioner’s daughter and guest will park on the lower part of the driveway or in a vacant spot on the west side of the street. Petitioner testified that the photograph submitted by her neighbors (Exhibit 13(b)) accurately depicts the available and unrestricted on-street parking on both side of East Parkhill

Drive. Tr. 47 and 70.

Petitioner testified that a neighborhood committee drafted an informal “common practices” agreement among the neighbors addressing on-street parking. Specifically, there is an understanding among the neighbors that they will try, space permitting, to park their vehicles on the west side of the street, especially for large gatherings, during the holidays or inclement weather. She testified that she parks her car in the carport and rarely parks in front of her house. She pointed out that in the neighbors’ photograph submitted with their letter (Exhibit 13 (b)) their SUV is parked in front of their house. Tr. 70-76. Petitioner testified that there is sufficient on-street parking for the tenants to park their vehicle. However, she clarified that she will allow her tenants to park their vehicle on her driveway for special circumstances (e.g., holidays, inclement weather) when there are a lot of vehicles parked on the street. Tr. 77.

Petitioner testified that the accessory apartment is located in the basement of her split-level house. Due to the topography of the lot, the basement is below ground in the front of the house and above ground in the rear. In addition to the basement, there are two levels in the main dwelling. Petitioner was given a copy of the Maryland Department of Taxation and Assessments (SDAT) record for her property (Exhibit 17).

Petitioner asked Mr. Goff if she could create a parking space in the area to the left of her driveway and between the curb and the ivy in her front yard. Mr. Goff advised Petitioner that this was a zoning issue and that front yard parking is generally not allowed. Tr. 85-88. Petitioner was advised that she could not use this area for parking.

B. Public Agency Testimony

Housing Code Inspector Robert Goff:

Mr. Goff's testimony during Petitioner's presentation is noted in the summary of Petitioner's testimony in the previous section. Mr. Goff testified that he inspected the property on January 28, 2013, and reported his findings in a memorandum dated February 13, 2013. (Exhibit 15). He testified that the only change to his report was to clarify that Petitioner needed to install a refrigerator in the kitchen (item No. 3). Mr. Goff identified the memorandum from Ada DeJesus, DHCA, Licensing and Registration, (Exhibit 15(a)) which reported that there were no accessory apartments or RLU's within the neighborhood. Mr. Goff could not explain why the accessory apartments noted in the Technical Staff report were omitted from her report. However, he clarified that DHCA determines the number of accessory apartment and RLU uses based on whether a license was issued for the use at the property. He noted that there are times when an owner will withdraw an application for a license after obtaining approval for a special exception because he/she is unable to complete required work. Tr. 83-84.

Mr. Goff agrees with Petitioner's testimony that there are no issues with on-street parking in front of her house. It is his opinion that the proposed accessory apartment will not have a negative impact on the residential character of the neighborhood. Tr. 85.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded

that Petitioner will have satisfied all the requirements to obtain the special exception if she complies with the recommended conditions. Exhibit 14.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and in the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory

apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent physical and operational characteristics of accessory apartments (Exhibit 14, pp. 9-10):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of another household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 14, p. 10):

Under the subject application, there are no adverse effects that will negatively impact the community above those necessarily inherent to an accessory apartment. The apartment will be located on the first floor of the main

dwelling and is not identifiable from the street. The apartment will provide space and facilities necessary for an apartment use.

The accessory unit has its own separate entrance apart from the rest of the house. The apartment entrance appears typical of a rear entrance to a one-family house, and it is difficult to distinguish it from any other neighborhood home.

On-street parking is permitted [] along both sides of East Parkhill Drive. A site visit to the property revealed adequate on street parking exists in the vicinity of this property. Thus, the accessory apartment's future tenant will not create an adverse impact to existing parking conditions in the defined neighborhood.

Based on these findings, Technical Staff concluded (Exhibit 14, p. 10):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no non-inherent adverse effects present in this case.

Based on these circumstances, and considering size, scale, light, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects arising from the proposed accessory apartment warranting denial of this petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21 General conditions.

§ 59-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Bethesda-Chevy Chase Master Plan*, approved and adopted in 1990. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Bethesda-Chevy Chase Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed special exception use will be in harmony with the general character of the neighborhood especially considering no structural changes to the home are

proposed or required to accommodate the accessory apartment use. The accessory apartment is fully contained in the basement of an existing dwelling with a separate entrance typical of a rear-entrance into a basement for a one-family home. It therefore will maintain its residential character. Occupancy will be limited to no more than two (2) unrelated persons or a family of three. Thus, the accessory apartment use “will have only a slight impact on population density and result in only a modest increase in the intensity of the property’s use [.]” Exhibit 14, p. 12. There is sufficient off-street parking for three vehicles (two on the driveway and one in the carport) and adequate on-street parking along both sides of East Parkhill Drive to accommodate the main dwelling and accessory apartment use. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are two accessory apartment uses within the defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

(5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the answer to the previous section of this report, the Hearing Examiner finds that the special exception will not be detrimental to the

use, peaceful enjoyment, economic value, or development of the surrounding properties or the general neighborhood provided that the special exception is operated in compliance with the listed conditions of approval in Part V, below.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found: “Due to the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, illumination or physical activity.” Exhibit 14, p. 12. The use will cause no objectionable illumination or glare as the existing and proposed exterior lighting will be residential in character provided Petitioner complies with the recommended conditions of approval as stated in Part V of the report. Since the use will be indoors and residential, the Hearing Examiner finds it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Based on a combined reading of the reports by Technical Staff (Exhibit 14) and DHCA (Exhibit 15(a)), there are two approved special exceptions accessory apartment uses (S-1915 and S-2846) within the neighborhood which is comprised of approximately 167 one-family detached homes. Both are located on Cedar Lane

near its intersection with East Parkhill Drive which is approximately 1,500 feet north of Petitioner's property. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the proposed special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that "[t]he proposed special exception will be adequately served by existing public services and facilities." Exhibit 14, p. 13. The evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The special exception sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the*

proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Technical Staff found that the existing roadways in the neighborhood can accommodate the small amount of traffic generated by the accessory apartment use. Thus, Technical Staff concluded that “[t]he proposed accessory apartment will not negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic.” Exhibit 14, p. 14. Based on the evidence of record, especially the availability of adequate parking on the property and along both sides of the street, and the limited number of additional trips generated by the special exception, the Hearing Examiner finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 14), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

(1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

Conclusion: Only one accessory apartment is proposed.

(2) The accessory apartment must have at least one party wall in

common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in the basement of an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: According to the SDAT records for the property, the house was built in 1956. Exhibit 17. It therefore meets the “5 year old” requirement.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection.

Also, a requirement that the occupancy of the main dwelling and the accessory apartment meet all these standards will be a condition of this approval.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through an existing separate entrance located in the rear of the dwelling. The entrance is distinct and separate from the main dwelling entrance and, according to Staff, “has the appearance of a typical rear-entry to a one-family home.” Exhibit 14, p. 16. Thus, the Hearing Examiner finds that there will be no change to the residential appearance of the dwelling.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: The only proposed external modifications to the dwelling related to the proposed accessory apartment include the installation of an egress window in the bedroom required by DHCA to provide adequate fire escape. Exhibit 15. Petitioner will make the necessary changes to one of the two existing bedroom windows. Thus, the necessary modification will be compatible with the existing dwelling and surrounding properties. No other modifications or improvements are proposed.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to*

a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.

Conclusion: The accessory apartment is approximately 451.9 square feet in size and is under the maximum 1,200 square feet restriction. According to the SDAT records for the property, the enclosed floor area for the main dwelling is 1,483 square feet. Exhibit 17. Thus, the Hearing Examiner finds, as did Technical Staff, that the proposed accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed submitted into the record, Petitioner purchased the property on April 30, 2004. Exhibit 10. The one-year rule has therefore been satisfied.

- (3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for occupancy of only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioner submitted a deed dated April 30, 2004, evidencing sole ownership of the subject property. Exhibit 10. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 11,724 square feet in size and therefore satisfies the 6,000 square feet minimum lot size. The property is located in the R-60 Zone, which permits an accessory apartment as a special exception use. According to Technical Staff, the subject property conforms to all the applicable development standards of the R-60 Zone. The following table from the Technical Staff report (shown on the next page of this report and slightly modified to show the actual floor area for the accessory apartment), demonstrates compliance with all development standards for the R-60 Zone (Exhibit 14, p. 9):

Development Standards	Min/Max Required	[Provided]	Applicable Zoning Ordinance Provisions
Minimum Lot Area	6,000 sq. ft.	11,724 sq. ft.	§59-C-1.322(a)
Minimum Lot Width at Street Line	25 ft.	55 ft.	§59-C-1.322(b)
Minimum Lot Width at Front Building Line	60 ft.	68 ft.	§59-C-1.322(b)
Minimum Setbacks			
-front	25 ft	28 ft	§59-C-1.322(a)
-side	8/18 ft	10/10 ft	§59-C-1.322(b)(1)
-rear	20 ft	76 ft	§59-C-1.322(b)(2)
Maximum Building Height	35 ft	25+ft	§59-C-1.327
Maximum Building coverage	35 %	12.6 %	§59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	451.9 sq. ft.	§ 59-G-2.00(a)(9)

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As previously discussed, there are two approved accessory apartments located in the neighborhood on Cedar Lane which is approximately 1,500 feet north of the Petitioner's property. The neighborhood is comprised of approximately 167 one-family homes. Accessory apartments are by definition a residential use. The Hearing Examiner, even considering the two approved accessory apartments within the neighborhood, concurs with Technical Staff and finds that the proposed accessory apartment will not create an excessive concentration of similar uses in the general neighborhood. Exhibit 14, p. 18.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: There is adequate off-street parking to accommodate at least three (3) vehicles (one in the carport and two on the driveway). Technical Staff found there was an “adequate of supply of on-street parking available for residents along both sides of East Parkhill Drive.” Exhibit 14, p. 18. Thus, the Hearing Examiner finds that the minimum requirement of two (2) off-street parking spaces has been met and there is adequate on-street parking along both sides of East Parkhill Drive to accommodate the accessory apartment and main dwelling.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector’s report (Exhibit 15) specifies certain conditions. Petitioner has agreed to meet all conditions of approval and will comply with directives of the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Ella Lichtenberg, BOA No. S-2862, which seeks a special exception for an accessory apartment to be located at 9237 East Parkhill Drive, Bethesda, Maryland, be GRANTED, with the following conditions:

1. Petitioner is bound by her testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in this Report and Recommendation;
2. Petitioner must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 15). This list includes Mr. Goff's amendments made during the hearing:
 - a. Install egress window in bedroom. Window must be no more than 44" from the floor to the window opening. Window must be at least 5 sq. feet opening.
 - b. Install bathtub or shower to make a full bath.
 - c. Install full kitchen which will include a refrigerator, stove, sink, cabinets and counter tops.
 - d. Install wall to block HVAC room from kitchen.
 - e. Install door at bottom of steps to block off accessory apartment from the main house.
 - f. Install exterior light fixture on right [south] side of house to illuminate the slate walkway to the accessory apartment entrance. Petitioner can use low-voltage ground lights to illuminate the slate walkway to the accessory apartment as an alternate to installing a motion sensor light fixture to the dwelling.
 - g. Install exterior light fixture over the door to accessory apartment.
 - h. Install smoke detector outside of bedroom.
 - i. The accessory apartment is a total of 451.9 square feet. The habitable space of the accessory apartment is 403 square feet. Two (2) unrelated persons or no more than a family of three (3) can occupy the accessory apartment.
 - j. Owner must obtain all permits and must have final approval before the accessory apartment can be occupied.
 - k. The driveway can accommodate 2 cars. The carport can accommodate one car. There is off-street parking (No permits needed).
 - l. All required building, electrical, and plumbing permits must be obtained and finalized before the unit may be occupied.
3. Petitioner must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
4. Petitioner will replace the 150 watt bulbs being used in the existing side flood light fixture with standard residential bulbs that are 100 watts or less;
5. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
6. The accessory apartment must not be located on a lot that is occupied by a family of

- unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
7. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
 8. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 10, 2013

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Tammy J. CitaraManis', written in a cursive style.

Tammy J. CitaraManis
Hearing Examiner